

RAILROAD EQUIPMENT LEASE

Lease No. 90891

RAILROAD EQUIPMENT LEASE dated as of September 25, 1975, between CHANDLER LEASING DIVISION, PEPSICO LEASING CORPORATION (hereinafter called "Lessor"), a Delaware corporation having a place of business at 101 Hartwell Avenue, Lexington, Massachusetts 02173, and PICKENS RAILROAD COMPANY, (hereinafter called "Lessee"), a South Carolina corporation having its principal place of business at 402 Cedar Rock Street, P.O. Box 216, Pickens, South Carolina.

In consideration of the mutual covenants hereinafter contained, Lessor and Lessee agree as follows:

1. Definitions. The following terms shall, unless the context otherwise requires, have the following meanings for all purposes of this Lease:

(a) "Equipment" means those units of railroad equipment described on Exhibit "A" attached hereto and made a part hereof, (or such lesser number of such units as are purchased and paid for by Lessor), owned or to be owned by Lessor and leased by Lessor to Lessee as provided herein.

(b) "Acquisition Cost" of Equipment means an amount equal to the sum of (i) the purchase price of the Equipment paid or payable by Lessor, plus (ii) any excise, sales and use tax on or with respect to the Equipment, plus (iii) any expenses of installation and freight acceptable to Lessor and other expenses acceptable to Lessor which are required to effect delivery of the Equipment to Lessee.

(c) "Certificate of Inspection and Acceptance" means a certificate, substantially in the form attached hereto and marked Exhibit "B", to be executed by Lessee, and dated the date of Lessee's acceptance for lease hereunder of any Equipment delivered to Lessee.

(d) "Rental Schedule" means a schedule to be executed by Lessor and Lessee, substantially in the form attached hereto and marked Exhibit "C" setting forth a full description of Equipment to be leased hereunder, its location, Acquisition Cost, the amount of rent payable by Lessee with respect thereto, the lease term thereof, the Lease Commencement Date with respect thereto, and such other details as Lessor and Lessee may desire.

(e) "Casualty Occurrence" and "Stipulated Loss Value" shall have the meanings specified in Section 14 hereof.

(f) "Event of Default" shall have the meaning specified in Section 19 hereof.

(g) "Lease Commencement Date" with respect to a unit of Equipment means the date of the commencement of the lease term of such unit, and shall be the date such unit is accepted by Lessee for lease hereunder.

2. Agreement for Lease of Equipment. Lessor shall acquire and lease to Lessee and Lessee shall lease from Lessor Equipment having an aggregate Acquisition Cost not in excess of Three Million Dollars (\$3,000,000.00) in the manner and upon the terms and conditions specified in this Equipment Lease, provided that the Equipment can be obtained. Lessor shall initially execute and deliver to Lessor a master Rental Schedule for all of the units of Equipment described on said Exhibit "A". Lessee's execution of such Rental Schedule shall obligate Lessee to lease all the Equipment described therein from Lessor upon the acceptance of such Equipment by Lessee for lease hereunder. Upon the acceptance of each unit of Equipment by Lessee for lease hereunder Lessee shall execute and deliver to Lessor a Rental Schedule for each such unit, together with a Certificate of Inspection and Acceptance therefor as specified in Section 3 hereof. Each such Rental Schedule shall, with respect to (but only with respect to) the units of Equipment described therein, replace that portion of the master Rental Schedule initially executed by Lessee as aforesaid that pertains to the same units of Equipment. Anything hereinbefore or hereinafter to the contrary notwithstanding, (A) Lessor shall have no obligation (i) to acquire and lease to Lessee any unit of Equipment if, in Lessor's opinion, there is a material, adverse change in Lessee's financial condition from the financial condition of Lessee

RECORDATION NO. 8060 Filed & Recorded
SEP 26 1975 - 8 50 AM
INTERSTATE COMMERCE COMMISSION



Countersigned *Michael Curry* *JD* *Curry*

disclosed in the most current financial statements of Lessee submitted to Lessor on or prior to the date of this Lease, or if an Event of Default has occurred and is continuing hereunder, or (ii) to issue any purchase order for any Equipment after December 31, 1975, or (iii) to acquire and lease to Lessee any unit of Equipment which has not been accepted by Lessee for lease hereunder by March 31, 1976, or any unit of Equipment the acquisition of which would cause the total aggregate Acquisition Cost of all Equipment leased or to be leased hereunder to exceed Three Million Dollars (\$3,000,000.00) or (iv) to accept any Rental Schedule from Lessee or to issue any purchase order for any such Equipment if, in Lessor's opinion, the benefits that would have been available to Lessor as the owner of such Equipment are adversely affected by any amendment(s) to the Internal Revenue Code of 1954, as amended, unless the rental provided for in Section 6 hereof is increased by an amount mutually agreed upon in writing, and (B) in the event that for any reason specified or referred to in clauses (i) through (iv) of this Section 2, Lessor fails to purchase any unit of Equipment ordered by Lessor Lessee shall indemnify Lessor from and against the payment of any and all liabilities, damages, causes of action, costs and expenses arising out of or resulting from the failure of Lessor to purchase any unit of Equipment as aforesaid.

3. Delivery and Acceptance. Lessor shall not be liable to Lessee for any failure or delay in obtaining any Equipment for delivery to Lessee. Upon acceptance for lease by Lessee of any Equipment delivered to Lessee Lessee shall execute and deliver to Lessor a Rental Schedule and a Certificate of Inspection and Acceptance with respect to such Equipment. As between Lessor and Lessee, Lessee's execution of a Rental Schedule and a Certificate of Inspection and Acceptance with respect to such Equipment shall constitute (a) Lessee's certification and acknowledgment that such Equipment (i) has been delivered to, and inspected by, Lessee, (ii) is of a size, design, capacity and manufacture acceptable to Lessee for lease hereunder, (iii) is suitable for Lessee's purposes, (iv) is in good working order, repair and condition, and has been installed to the satisfaction of Lessee, and (b) Lessee's unconditional acceptance of such Equipment for all purposes of this Lease. If Lessee fails to execute and deliver to Lessor a Rental Schedule and a Certificate of Inspection and Acceptance within thirty (30) days following the delivery of the Equipment covered thereby, then, unless Lessee has, within such period, notified Lessor in writing that such Equipment is defective or is in unsatisfactory repair or working condition, Lessor may, if it so elects by written notice to Lessee, conclusively presume that such Equipment has been unconditionally accepted by Lessee for lease hereunder as of the thirtieth (30th) day following its delivery to Lessee, with the same force and effect as if Lessee had, on such date, executed such Rental Schedule and Certificate of Inspection and Acceptance with respect thereto. In the event that the serial number for any unit of Equipment is not set forth in the Certificate of Inspection and Acceptance therefor, it shall be presumed that the serial number for such unit is the same as the serial number (if any) for such unit set forth on the vendor's invoice for such unit, and Lessee hereby authorizes Lessor to insert such serial number on the Certificate of Inspection and Acceptance for such unit.

4. NO WARRANTIES BY LESSOR. LESSOR, NOT BEING THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT, HEREBY MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND, AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO: THE TITLE TO, OR CONDITION, DESIGN, QUALITY OR CAPACITY OF, ANY EQUIPMENT; THE MERCHANTABILITY OF ANY EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE WORKMANSHIP IN THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT OR LATENT DEFECTS. IN NO EVENT SHALL ANY DEFECT IN, OR UNFITNESS OF, ANY EQUIPMENT RELIEVE LESSEE OF THE OBLIGATION TO PAY RENT OR TO MAKE ANY OTHER PAYMENTS REQUIRED HEREUNDER OR OF ANY OTHER OBLIGATION HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LESSOR SHALL NOT BE LIABLE FOR ANY DEFECTS, EITHER LATENT OR PATENT, IN ANY OF THE EQUIPMENT OR FOR ANY DIRECT OR CONSEQUENTIAL DAMAGE THEREFROM, AND SHALL NOT BE LIABLE TO LESSEE FOR LOSS OF USE OF ANY OF THE EQUIPMENT OR FOR ANY INTERRUPTION IN LESSEE'S BUSINESS OCCASIONED BY LESSEE'S INABILITY TO USE ANY OF THE EQUIPMENT FOR ANY REASON WHATSOEVER.

5. Lease Term. The lease term of each unit of Equipment shall commence on the Lease Commencement Date thereof and shall, unless sooner terminated pursuant to the provisions of Sections 14, 18 or 19 hereof, or extended for the additional period specified in Section 25 of this Lease, be for a period of one hundred twenty-one (121) full months, plus the number of days remaining in any partial first month if the Lease Commencement Date of

such unit occurs on other than the first day of a month. Notwithstanding the foregoing, the provisions of Section 11 shall apply as between Lessor and Lessee with respect to any unit of Equipment from the time such unit is ordered by Lessor. Lessee hereby authorizes Lessor to insert the Lease Commencement Date for any unit of Equipment on the Rental Schedule therefor when such unit has been accepted by Lessee for lease hereunder.

6. Rent. Lessee agrees to pay Lessor rent for each unit of Equipment from and inclusive of the Lease Commencement Date thereof and throughout the lease term thereof, as follows:

(A) Basic Rent. For each full month of the original one hundred twenty-one (121) month lease term of each unit of Equipment, Lessee shall pay Lessor, rent in an amount equal to 1.348% of the Acquisition Cost of such unit, and such rent shall be paid not later than forty-five (45) days after the last day of such month.

(B) Additional Rent. In addition to the basic rent payable monthly by Lessee to Lessor for each unit of Equipment, as specified in paragraph (A) above, Lessee shall also pay Lessor quarterly rent for such unit in an amount equal to fifty percent (50%) of the amount, if any, by which the aggregate amount of Incentive Per Diem, Per Diem and Mileage Allowance received by Lessee for or with respect to such unit during such quarter exceeds the sum of (x) the aggregate said basic rent paid by Lessee to Lessor for such unit during such quarter, plus (y) an amount equal to Lessee's allowable costs (hereinafter defined) for such unit for such quarter. Such additional rent shall be paid by Lessee to Lessor for each such unit not later than sixty (60) days after the end of the quarter for which such rent was payable, and shall be paid for each quarter of the original one hundred twenty-one (121) month lease term of each such unit. Lessee shall submit to Lessor, with each quarterly payment of such additional rent copies of documentation received from the various railroads evidencing the aggregate amount of Incentive Per Diem, Per Diem and Mileage Allowance received by Lessee for or with respect to such unit of Equipment for the quarter for which such additional rent was paid. As used in this paragraph (B) the following terms shall have the following meanings:

(i) "quarter" means a full calendar quarter;

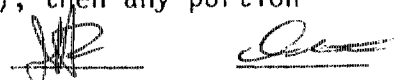
(ii) "Incentive Per Diem", "Per Diem" and "Mileage Allowance" means and includes all sums due from any railroad for the use of any unit of Equipment, or for the location of such unit upon the tracks or lines of such railroad;

(iii) "Lessee's allowable costs" means, for each quarter of the original one hundred twenty-one (121) month lease term of each unit of Equipment, an amount equal to the sum of (a) six percent (6%) of the aggregate Incentive Per Diem, Per Diem and Mileage Allowance received by Lessee during such quarter for or with respect to such unit, plus (b) for each full month during each such quarter, an amount equal to .0248% of the Acquisition Cost of such unit, plus (c) one dollar (\$1.00) for each such unit for each day of each such quarter.

(C) Advance Rent. Lessor hereby acknowledges receipt of payment by Lessee of the sum of thirty thousand dollars (\$30,000.00) to be applied or retained by Lessor as follows:

(i) if no Event of Default has occurred and is continuing hereunder, then from the aforesaid sum of thirty thousand dollars (\$30,000.00) there shall be applied against the payment by Lessee of the first partial (if any) and first full month's rent payment for each unit of Equipment an amount equal to one percent (1%) of the Acquisition Cost of such unit; provided, however, that if the said one percent (1%) amount is greater than the total of the first partial and first full month's rent for such unit, the amount by which said one percent (1%) amount exceeds such first partial and first full month's rent for such unit shall be applied against the rent for the second full month for such unit;

(ii) if Lessee, for any reason whatsoever, does not lease from Lessor hereunder Equipment having an aggregate Acquisition Cost of three million dollars (\$3,000,000.00), then any portion



of the aforesaid sum of thirty thousand dollars (\$30,000.00) which has not been applied in the manner specified in subparagraph (i) of this paragraph (C) shall, on March 31, 1976, be retained by Lessor to the extent of the amount by which three million dollars (\$3,000,000.00) exceeds the actual aggregate Acquisition Cost of all Equipment leased by Lessee from Lessor hereunder by such date;

(iii) in addition to, and not in limitation of, the provisions of subparagraph (ii) of this paragraph (C), upon the occurrence of an Event of Default hereunder Lessor may retain any portion of the aforesaid sum of thirty thousand dollars (\$30,000.00) which has not theretofore been applied by Lessor pursuant to the provisions of subparagraph (i) of this paragraph (C) or retained by Lessor pursuant to the provisions of subparagraph (ii) of this paragraph (C), and such amount so retained shall be applied by Lessor against the amounts payable by Lessee to Lessor pursuant to Section 19 hereof.

(D) Partial First Month's Rent. If the Lease Commencement Date of a unit of Equipment occurs on other than the first day of a month, Lessee shall pay Lessor rent for such partial first month in an amount obtained by dividing the amount of the basic monthly rent payable for such unit (as specified in paragraph (A) above) by thirty (30) and multiplying the quotient by the number of days remaining in such partial first month, including the Lease Commencement Date, and such payment shall be made together with the payment of the first full month's basic rent for such unit.

(E) Extended Rent. If Lessee exercises its option to extend the original one hundred twenty-one (121) month lease term of each unit of Equipment for the extended term specified in Section 25 hereof, Lessee shall pay Lessor rent during such extended term at the times and in the manner specified in said Section 25.

Lessee hereby authorizes Lessor to insert the partial first month's rent (if any) for each unit of Equipment on the Rental Schedule therefor when each such unit of Equipment has been accepted by Lessee for lease hereunder. All rent shall be payable unconditionally without any deduction, counter-claim, set-off, further notice or demand, and together with all other payments due under this Lease shall be payable directly to Lessor at 101 Hartwell Avenue, Lexington, Massachusetts 02173, or at such other address or to such other party as Lessor may from time to time designate in writing.

7. Errors in Acquisition Cost. Subject always to the provisions of Section 2 hereof, in the event that at the time a unit of Equipment is accepted by Lessee for lease hereunder it becomes known that the actual Acquisition Cost of such unit differs from the Acquisition Cost figure for same inserted by Lessee on the Rental Schedule for such unit, Lessee hereby authorizes Lessor to make the necessary corrections in such Acquisition Cost figure and to also make any necessary adjustments or corrections necessitated thereby in the rent figures for such unit set forth on such Rental Schedule.

8. Lessee's Representations and Warranties. Lessee hereby represents and warrants to Lessor that on the date of this Lease and on the date of each Rental Schedule executed by Lessee pursuant hereto

(a) Lessee (i) is duly organized, validly existing and in good standing under the laws of the state indicated above, (ii) is qualified to do business in every jurisdiction in which such qualification is necessary, (iii) has the power and authority to own its properties and to carry on its business as now being conducted and to execute and perform this Lease, and (iv) has duly authorized the execution, delivery and performance of this Lease;

(b) this Lease constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms, and the execution, delivery and performance of the same by Lessee will not violate any provision of law, any order of any court or other agency of government, or any indenture, agreement or other instrument to which Lessee is a party, or by or under which Lessee or any of Lessee's



property is bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Lessee's property or assets;

(c) No authorization, approval or consent of any public body, agency, commission (including, without limitation, the Interstate Commerce Commissions), board, federal, state or local, is necessary or required, by statute or otherwise, in connection with the execution of this Lease and the payment and performance by Lessee of its obligations hereunder;

(d) all balance sheets, statements of profit and loss and other financial data that have been delivered to Lessor with respect to Lessee (i) are complete and correct in all material respects, (ii) accurately present the financial condition of Lessee as of the dates, and the results of its operations for the periods for which, the same have been furnished, and (iii) have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods covered thereby; all balance sheets disclose all known liabilities, direct and contingent, as of their respective dates; and there has been no change in the condition of Lessee, financial or otherwise, since the date of the most recent financial statements delivered to Lessor with respect to Lessee other than changes in the ordinary course of business, none of which changes has been materially adverse;

(e) no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest therein of Lessee, now attaches or hereafter will attach to the Equipment leased hereunder or in any manner affects or will affect adversely Lessor's right, title and interest therein; and

(f) there are no suits or proceedings pending, or, to the knowledge of Lessee threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting Lessee, which will have a material adverse effect on the financial condition or business of Lessee.

9. Identification Marks. At or prior to the time of the delivery of any unit of Equipment to Lessee, Lessee shall, at Lessee's expense, cause to be plainly, distinctively, permanently and conspicuously stencilled upon each side of such unit the following words in letters not less than one inch in height: "PROPERTY OF CHANDLER LEASING DIVISION, PEPSICO LEASING CORPORATION, OWNER AND LESSOR", and Lessee shall keep and maintain such stencilling throughout the lease term of such unit. The Lessee will not place any unit of Equipment in operation or exercise any control or dominion over the same until such name and words shall have been so stencilled on both sides thereof and will replace promptly any portion of such name and words which may be removed, defaced or destroyed. Lessee will not change the identifying number of any unit of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease and any supplements thereto shall have been filed, recorded and deposited and (ii) Lessee shall have furnished Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect Lessor's interest in such unit and no filing, recording, deposit or giving of notice with or to any other federal, state or local government or agency thereof is necessary to protect the interest of Lessor in such unit. Lessee will not allow the name of any persons, association or corporation to be placed on any unit of Equipment as a designation or as a claim of ownership other than that of Lessor; provided, however, that Lessee may cause such Unit to be lettered with the names or initials or other insignia customarily used by Lessee on its own equipment.



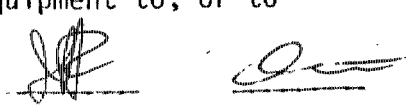
10. Fees and Taxes. Lessee agrees to pay promptly when due, and to indemnify and hold Lessor harmless from and against, (i) all license, title, registration and qualification fees whatsoever, (ii) all levies, assessments, imposts, duties, charges or withholdings whatsoever, and (iii) all taxes whatsoever (and any penalties, fines or interest thereon) however designated, by whomsoever payable, which are assessed, levied or payable with respect to any Equipment or the purchase, sale, ownership, delivery, leasing, possession, use, operation, control, return or other disposition thereof, or with respect to the rents, receipts or earnings arising therefrom, or with respect to this Lease, excepting only any federal, state or local taxes levied on Lessor's net income, as net income is presently determined under the Federal Internal Revenue Code. In the event any such fees, levies, imposts, duties, charges or taxes are paid by Lessor, or if Lessor be required to collect or pay any thereof, Lessee shall reimburse Lessor therefor, plus any penalties, fines or interest thereon, promptly upon demand. Lessor will file all personal property tax returns covering the Equipment, and unless and until Lessor notifies Lessee in writing to the contrary, Lessor will pay the personal property taxes levied or assessed thereon directly to the taxing authority. Lessee will, promptly upon being invoiced by Lessor, reimburse Lessor for the full amount of such personal property taxes paid or payable by Lessor. In the event Lessor should request Lessee in writing to pay any personal property taxes directly, Lessee agrees that it will do so promptly, upon receipt of such notice. Lessee's obligations under this Section 10 shall not be affected by any termination of this Lease or of the lease term of any Equipment leased hereunder.

11. Indemnification by Lessee. Lessee agrees to indemnify and hold Lessor harmless from and against any and all claims, demands, liabilities, losses, damages and injuries, of whatsoever kind, and all fees (including attorneys' fees), costs, expenses, penalties and interest, relating to, resulting from, or in any way arising out of

- (a) Lessor's purchase, acquisition and ownership of, and title to, any Equipment;
- (b) the delivery, possession, maintenance, condition (including, without limitation, latent and other defects whether or not discoverable by Lessor) use, operation, control, loss, damage, destruction, removal, return, repossession, storage, surrender, sale or other disposition of any Equipment;
- (c) any accident in connection with the delivery, possession, operation, use, condition, control, return or storage of any Equipment resulting in loss or destruction of, or damage to, property, or injury to or death of any person;
- (d) all costs, charges, damages or expenses for royalties and/or claims and expenses of litigation, arising out of or in any way connected with the assertion of any claim or demand based upon any infringement or alleged infringement of any patent, trademark, or other right, by or in respect of any Equipment;
- (e) strict liability in tort; and
- (f) any violation or alleged violation, of any provision of this Lease (except by Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaption or maintenance thereof, or the payment of rent with respect thereto.

In case any action, suit or proceeding is brought against Lessor in connection with any claim indemnified against hereunder, Lessee shall, at Lessor's request and at Lessee's sole cost and expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by Lessee and approved by Lessor. The indemnification by Lessee under this Section 11 shall not be affected by any termination of this Lease, or of the lease term of any Equipment leased hereunder, but shall not apply to any claims, demands, liabilities, losses, damages and injuries which accrue after the termination of this Lease, except those which accrue after such termination as a result of the occurrence of an Event of Default hereunder.

12. Possession and Use of Equipment. So long as no Event of Default has occurred and is continuing hereunder and Lessee shall have fully complied with the provisions of this Section 12, Lessee shall be entitled to the possession of the Equipment and also to sublease the Equipment to, or to

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive 'J' followed by a horizontal line. The second signature is a more fluid, cursive signature, possibly reading 'J. [unclear]'.

permit its use under the terms of car contracts by, a sublessee or user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic in the continental United States, or, on an occasional basis, in Canada or Mexico, but only upon and subject to all the terms and conditions of this Lease; provided, however, that any such sublease or use and the rights of any such sublessee or user are made expressly subject to and subordinate to the rights and remedies of Lessor under this Lease and such sublease or use shall not in any way limit or affect Lessee's obligations to Lessor hereunder, which obligations shall be and always remain primary, direct, and those of a principal and not a guarantor. Lessee shall not permit any liens, charges or encumbrances to be placed on or levied against any unit of Equipment other than liens, charges or encumbrances placed thereon by Lessor or by persons claiming against Lessor but not against Lessee. Except to the extent permitted in this Section 12, Lessee shall not, without Lessor's prior written consent, part with the possession or control of, or suffer or allow to pass out of its possession or control, any unit of Equipment.

13. Compliance with Laws and Rules; Maintenance. Lessee represents, warrants and agrees to comply in all respect (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, maintenance, operation or use of the Equipment (and to obtain and maintain in effect, at its expense, all licenses, certificates, permits, approvals and consents required by any such laws or rules), and in the event that any laws or rules require any alterations, replacement or addition of or to any part of any unit of Equipment, Lessee will fully conform therewith at its own expense; provided, however, that Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor adversely affect the property or rights of Lessor under this Lease. Lessee agrees that, at its own cost and expense, it will maintain and keep each unit of Equipment (including any parts installed on or replacements made to such unit and considered an accession thereto as hereinafter provided) in good working order and proper repair.

Any and all additions to any unit of Equipment and any and all parts installed thereon or replacements made thereto shall be considered accessions to such unit and, without cost or expense to Lessor there shall immediately be vested in Lessor title to such accessions. Notwithstanding the foregoing, Lessor shall have the right, upon the return of each unit of Equipment pursuant to Section 17 or 18, whichever is applicable, to request that any such addition to such unit or any such part installed thereon or replacement made thereto, be removed by Lessee and that Lessee restore such unit to its original condition as of the Lease Commencement Date of such unit, reasonable wear and tear only being excepted, and, if so requested, Lessee shall forthwith cause such removal and restoration to be undertaken at its sole cost and expense, and title to such addition, part or replacement shall, upon the completion of such removal and restoration, automatically revert in Lessee.

14. Loss, Damage or Destruction of Equipment. Lessee shall bear all risks of damage to, or loss or destruction of, any Equipment during the lease term thereof and until such Equipment has been returned to Lessor pursuant to the provisions of Section 17 or 18 hereof, whichever is applicable, and thereafter until (i) in the case of a return of Equipment to Lessor pursuant to the provisions of Section 17 hereof, the expiration of the ninety (90) day period specified therein, and (ii) in the case of a return of Equipment to Lessor pursuant to the provisions of Section 18 hereof, until such Equipment has been sold, leased or otherwise disposed of by Lessor. No such damage to, or loss or destruction of, any Equipment, shall impair any obligation of Lessee to Lessor under this Lease, including, without limitation, the obligation to pay rent. In the event that any unit of Equipment shall become lost, stolen, destroyed or irreparably damaged from any cause whatsoever, or if any unit of Equipment or Lessor's title thereto shall be commandeered, requisitioned or seized by any governmental




authority (each such occurrence being hereinafter called a "Casualty Occurrence") Lessee shall promptly notify Lessor in writing of such fact, fully informing Lessor of all details with respect thereto, and on the last day of the month in which such Casualty Occurrence has taken place, Lessee shall pay Lessor an amount equal to the sum of (i) the Stipulated Loss Value, as hereinafter defined, of such unit of Equipment as of the last day of such month plus (ii) all accrued and unpaid rent payable for such unit of Equipment through the last day of such month plus (iii) any other amounts owing by Lessee hereunder with respect to such unit of Equipment, whether as additional rent, indemnification or otherwise. Upon the making of such payment by Lessee in respect to any unit of Equipment, the rent for such unit shall cease to accrue as of the date of such payment, the lease term of such unit shall terminate, and all of Lessor's title to and rights in such unit shall automatically pass to Lessee. Any insurance proceeds received as the result of a Casualty Occurrence with respect to a unit of Equipment shall be applied first in reduction of any then unpaid obligation of Lessee to Lessor hereunder and secondly in reduction of Lessee's obligation to pay the Stipulated Loss Value for such unit, if not already paid by Lessee to Lessor, or, if already paid by Lessee, to the reimbursement of Lessee for its payment of such Stipulated Loss Value, and the balance of the insurance proceeds, if any, shall be paid to Lessee, if Lessee is not then in default hereunder. In the event that a unit of Equipment has been damaged, but not irreparably, Lessor shall, if no Event of Default has occurred and is continuing hereunder, release to Lessee the proceeds of any insurance received by Lessor as a result of such damage for the purpose of reimbursing Lessee for the costs of repairing or restoring such unit, upon receipt by Lessor of evidence, satisfactory to Lessor, that such repair or restoration has been completed, and an invoice therefor.

The Stipulated Loss Value of any unit of Equipment as of the last day of any month during (and after) the lease term thereof shall be an amount equal to the product derived by multiplying (i) the percentage figure set forth opposite such month in the Schedule of Stipulated Loss Values attached hereto as Exhibit "D" by (ii) the Acquisition Cost of such unit of Equipment.

15. Reports. On or before April 1 in each year, commencing with the calendar year 1976, Lessee will furnish to Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of Equipment then leased hereunder, the amount, description and numbers of all units of Equipment that have suffered a Casualty Occurrence during the preceding calendar year or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as Lessor may reasonably request and (b) stating that, in the case of all units of Equipment repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 9 hereof have been preserved or replaced. Lessor shall have the right by its agents, to inspect the Equipment and Lessee's records with respect thereto at such reasonable times as Lessor may request during the continuance of this Lease.

16. Insurance. Lessee will procure and maintain, at its sole cost and expense, at all times during the lease term of any Equipment, and until such Equipment has been returned to Lessor in accordance with the provisions of Section 17 or 18, whichever is applicable, and thereafter (i) in the case of the return of Equipment to Lessor pursuant to the provisions of Section 17 hereof, the expiration of the ninety (90) day period specified therein, and (ii) in the case of the return of Equipment to Lessor pursuant to the provisions of Section 18 hereof, until such Equipment has been sold, leased or otherwise disposed of by Lessor, the following insurance coverages with reputable insurers acceptable to Lessor: (a) public liability and property damage insurance insuring against liability for death, bodily injury and property damage resulting from ownership, possession, maintenance, use and operation of the Equipment, in an amount not less than one million dollars (\$1,000,000.00) for each accident, in the case of bodily injury or death resulting therefrom, and one million dollars (\$1,000,000.00) for each accident, in the case of property damage; and (b) insurance in an amount not less than the Stipulated Loss Value (hereinbefore defined) of each unit of Equipment leased hereunder, insuring against loss and/or damage to such



Equipment arising out of any risk covered by derailment, collision, fire, theft, windstorm, explosion, and extended coverage, and against such other risks as Lessor may, from time to time, reasonably deem to be necessary. The insurance policies evidencing the coverages required policies evidencing the coverages required under clause (a) above shall name Lessor as an additional insured, as its interests may appear, and the insurance policies evidencing the coverages required under clause (b) above shall name Lessor (and any assignee of Lessor, if requested by such assignee) as the sole loss payee, so that the insurance proceeds payable under such policies with respect to the Equipment shall be payable solely to Lessor (and/or to any such assignee of Lessor). All such insurance policies shall also provide that same will not be invalidated as against Lessor (or as against any assignee of Lessor) because of any violation of a condition or warranty of the policy or application therefor by Lessee, and that same may only be materially altered (including a reduction in the amount of the coverages, or a modification of the coverages, specified therein) or cancelled by the insurer after thirty (30) days prior written notice thereof has been given to Lessor and to any assignee of Lessor. Lessee shall deliver to Lessor, prior to the Lease Commencement Date of any unit of Equipment (or at such other time or times as Lessor may request) a certificate or other evidence of the procurement and maintenance of all such insurance satisfactory to Lessor; provided however, that Lessor shall be under no duty to examine such certificate or other evidence of insurance, or to advise Lessee in the event that its insurance is not in compliance with this Lease. In the event of failure on the part of Lessee to provide and furnish any of the aforesaid insurance, Lessor may procure such insurance and Lessee shall, upon demand, reimburse Lessor for all expenditures made by Lessor for such insurance, together with interest thereon computed at the rate of twelve percent (12%) per annum (or the maximum per annum rate of interest permitted by law, whichever is less) from the date of Lessor's payment until reimbursed by Lessee.

17. Return of Equipment Upon Expiration of Lease Term. Lessee will furnish Lessor with written notice not less than one (1) year prior to the expiration of the original one hundred twenty-one (121) month lease term of each unit of Equipment leased hereunder (and written notice not less than one (1) year prior to the expiration of any extension, specified in Section 25 hereof, of said original lease term of each unit of Equipment leased hereunder) specifying in such notice whether Lessee will, upon the expiration of said original (or extended) lease term, (i) exercise its purchase option under Section 24 hereof, or (ii) in the case of the expiration of the said original lease term, extend the lease term under Section 25 hereof, or (iii) return such Equipment to Lessor pursuant to the provisions of this Section 17. If Lessee does not elect to exercise its said purchase option, then promptly upon the termination of the said original or extended lease term of each unit of Equipment leased hereunder, Lessee will, at its own cost and expense, at the request of Lessor, cause each such unit of Equipment to be transported to such point or points east of the Mississippi River as Lessee shall promptly designate in writing to Lessor immediately prior to such termination, and which point or points shall either be on Lessee's lines or at storage sites on the lines of other railroads, and Lessee shall arrange for Lessor to store each such unit of Equipment on any such lines or at any such sites for a period not exceeding ninety (90) days from the date each such unit of Equipment is first placed in storage pursuant to this Section 17; the assembly, delivery, storage and transporting of each such unit of Equipment to be at the expense and risk of the Lessee. During any such storage period Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of each such unit of Equipment, to inspect the same; provided however, that Lessee shall not be liable except in the case of negligence or intentional act of Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to cause the assembly, delivery, storage and

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive mark, and the second is a more legible, cursive signature.

transporting of the Equipment. Each unit of Equipment returned to Lessor pursuant to this Section 17 shall (i) be in the same operating order, repair and condition as of the Lease Commencement Date of such unit, reasonable wear and tear excepted, (ii) have attached or affixed thereto any additions, parts or replacements which have become an accession thereto as provided in Section 13 hereof, and have removed therefrom any addition, part or replacement whose removal was requested by Lessor as provided in said Section 13, and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable.

18. Return of Equipment Upon Occurrence of Event of Default. Upon the occurrence of an Event of Default under this Lease, Lessee shall upon being requested so to do by Lessor in writing, forthwith deliver possession of all of the Equipment to Lessor and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any unit of Equipment so to return such unit. Each such unit of Equipment returned to Lessor pursuant to this Section 18 shall (i) be in the same operating order, repair and condition as of the Lease Commencement Date of such unit, reasonable wear and tear excepted, (ii) have attached or affixed thereto any additions, parts or replacements which have become an accession thereto as provided in Section 13 hereof, and have removed therefrom any addition, part or replacement whose removal was requested by Lessor as provided in said Section 13, and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any unit of Equipment to Lessor as above required, Lessee shall at its own cost, expense and risk:

- (a) forthwith and in the usual manner cause such unit of Equipment to be transported to such location as shall reasonably be designated by Lessor and there assembled;
- (b) furnish and arrange for Lessor to store such unit of Equipment on any lines of railroad or premises approved by Lessor until such unit has been sold, leased or otherwise disposed of by Lessor; and
- (c) cause such unit of Equipment to be moved to such interchange point or points as shall be designated by Lessor upon any sale, lease or other disposal of such unit of Equipment.

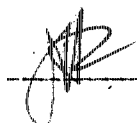
The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport of Equipment. During any storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such unit of Equipment to inspect the same. In the event that any unit of Equipment is sold pursuant to the exercise by Lessor of its rights under Section 19 hereof, Lessee shall pay to Lessor the per diem interchange for any unit of Equipment which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 18, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any unit of Equipment to Lessor to demand and take possession of such unit in the name and on behalf of Lessee from whomsoever shall be in possession of such unit at the time.

19. Events of Default.

(a) The occurrence of any of the following events shall constitute an Event of Default hereunder:

- (i) default in the payment of any rent under Section 6(A), (B), (D) or (E) hereof;



(ii) default in the payment of any obligation, other than rent, provided for in this Lease, and the continuance of such default for more than five (5) days after written notice thereof to Lessee;

(iii) default in the observance and/or performance by Lessee of any other covenant, condition and agreement on the part of Lessee to be observed and/or performed under this Lease and the continuance of such default for thirty (30) days after written notice from Lessor to Lessee specifying the default and demanding the same to be remedied;

(iv) any representation or warranty made by Lessee herein or made by Lessee or by any officer of Lessee or by Lessee's parent, National Railway Utilization Corporation (hereinafter called "National") in any letter, document or certificate executed and furnished to Lessor in connection herewith or pursuant hereto shall at any time be untrue, breached or not performed;

(v) Lessee shall make or permit any assignment or transfer of this Lease or of Lessee's rights and obligations hereunder, or Lessee shall make or permit any unauthorized sublease or transfer of any Equipment, or of the possession of same;

(vi) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and (unless such petition shall have been dismissed, nullified, or otherwise rendered ineffective within sixty (60) days of such filing) all the obligations, accrued and executory, of Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings within thirty (30) days after such appointment or sixty (60) days after such petition shall have been filed, whichever shall be earlier; or any other bankruptcy, reorganization, insolvency, debt arrangement, receivership, liquidation or dissolution proceedings shall be commenced by or against Lessee, pursuant to any federal or state statute, and, if instituted against Lessee, shall not be discharged or dismissed within sixty (60) days thereafter; or Lessee shall make an assignment for the benefit of its creditors, or become insolvent or admit in writing its inability to pay its debts as they mature, or Lessee's corporate existence shall terminate;

(vii) any obligation of Lessee in excess of one hundred thousand dollars (\$100,000.00) for the payment of borrowed money or for the leasing of land, buildings or assets, or for the acquisition of assets by conditional sale or similar arrangement, shall be declared to be due and payable prior to the stated maturity thereof (after giving effect to all grace periods, if any) by reason of default or other violation of the terms of any promissory note, loan agreement, indenture, lease or other agreement evidencing or governing any such obligation;

(viii) Lessee or National shall breach their respective representations under, or shall otherwise default in the performance of their obligations under (a) that certain Subordination Agreement of even date herewith addressed to Lessor and executed by Pickens and National; or (b) the Subordination Agreements of even ^{et al} date herewith addressed to Lessor and executed by Lessee, National and various stockholders of National (or corporations which are controlled by, or the majority of the voting common stock of which is owned by, any such stockholder);

(ix) Lessee defaults in the performance of its obligations under that certain letter agreement of even date herewith among Lessee, Lessor and First Piedmont Bank and Trust Company, relating to the establishment, maintenance and administration of an escrow account for the receipt of per diem, incentive per diem and mileage payments to be made by railroads on or with respect to the Equipment; or



(x) Lessee defaults in the performance of its obligations under that certain Supplementary Agreement of even date herewith between Lessee and Lessor respecting the establishment of additional security for Lessor in the event it is finally determined that incentive per diem may not be expended for rent payments hereunder.

(b) Upon the occurrence of any such Event of Default, Lessor may, at its option, exercise any one or more of the following rights:

(1) declare, by written notice to Lessee, the entire amount of rent remaining to be paid over the balance of the lease term of all Equipment then leased hereunder, computed from the date of the occurrence of any such Event of Default (and discounted to its then present value at the rate of six percent (6%) per annum) to be immediately due and payable, whereupon the payment of such amount shall be so accelerated and such amount shall be payable by Lessee forthwith;

(2) proceed by appropriate court action or actions at law or in equity or in bankruptcy to enforce performance by Lessee of the covenants and terms of this Lease and/or to recover damages for the breach thereof;

(3) repossess any or all Equipment wherever found, without prejudice to Lessor's rights under Section 17 hereof or to any remedy or claim referred to in this Section 19, with or without legal process, and without notice to Lessee, and for this purpose Lessor and/or its agents may enter upon any premises of or under the control or jurisdiction of Lessee or any agent of Lessee (or any other premises, in so far as Lessee may be lawfully authorized to so permit) without liability for suit, action or other proceeding by Lessee (any damages occasioned by such repossession being hereby expressly waived by Lessee) and remove the Equipment therefrom, LESSEE HEREBY CONSENTING TO SUCH REPOSSESSION AND WAIVING ANY RIGHT TO NOTICE OR A HEARING OF ANY KIND PRIOR TO SUCH REPOSSESSION;

(4) repossess any or all Equipment, by obtaining possession thereof in accordance with the provisions of Section 18 hereof and without prejudice to any remedy or claim referred to in this Section 19.

(5) with respect to any or all Equipment repossessed by, and/or returned to, Lessor, elect to sell any or all such Equipment at one or more public or private sales, or elect to lease any or all such Equipment, by giving, in either case, written notice to Lessee to such effect, whereupon Lessee shall be liable for, and Lessor may recover from Lessee as liquidated damages for Lessee's default hereunder, and not as a penalty, an amount equal to the amount, if any, by which (A) the sum of (i) the aggregate Stipulated Loss Value of such Equipment as of the last day of the month in which such written notice is given by Lessor to Lessee, plus (ii) all unpaid rent owing hereunder for such Equipment for each month to and including the last day of the month in which such written notice is given by Lessor to Lessee, plus (iii) all costs and expenses incurred by Lessor in locating, removing, repossessing, repairing, reconditioning, restoring and selling or leasing such Equipment, plus (iv) all other amounts owing by Lessee hereunder, whether as indemnification or otherwise, plus (v) all costs and expenses, including, without limitation, attorneys' fees and expenses, and fees and expenses of collection agencies, incurred by Lessor as a result of Lessee's default hereunder, exceeds (B) the amount (discounted to present value at the rate of six percent (6%) per annum, if Lessor leases such Equipment) received by Lessor from such public or private sales, or such leases, of such Equipment;

(6) upon written notice to Lessee receive prompt payment from Lessee of an amount equal to the sum of the aggregate Stipulated Loss Value as of the last day of the month in which such written notice is given of (a) any or all Equipment which has not been repossessed by Lessor and/or not returned to Lessor, for any reason, and has not been sold or leased by Lessor pursuant to said subparagraph (5) above, for any reason, plus, to the extent not otherwise recovered from Lessee pursuant to



subparagraph (5) above, (i) any unpaid rent owing hereunder to and including the last day of the quarter in which such written notice is given, plus (ii) all costs and expenses incurred by Lessor in locating, removing, repossessing, storing, repairing, reconditioning and restoring such Equipment, plus (iii) all other amounts owing by Lessee hereunder, whether as indemnification or otherwise, plus (iv) all costs and expenses, including, without limitation, attorneys' fees and expenses, and fees and expenses of collection agencies, incurred by Lessor as a result of Lessee's default hereunder; provided that upon receipt of payment in full of such amount, Lessor shall transfer to Lessee, on an as-is, where-is basis, and without any representation or warranty of any kind, express or implied, whatever title to such Equipment Lessor may have, and free from any liens or encumbrances placed thereon by Lessor or by persons who are claiming solely against Lessor but not against Lessee;

(7) without prejudice to any remedy or claim referred to in this Section 19, elect to hold or use, for any purpose whatsoever, any Equipment repossessed by Lessor and/or returned to Lessor, including, without limitation, any holding of such Equipment for the purposes of sale or lease referred to in said subparagraph (5) above;

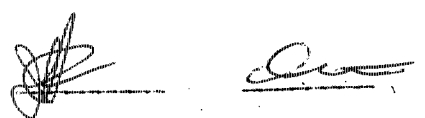
(8) by written notice to Lessee declare this Lease terminated, without prejudice to any other rights, remedies or claims of Lessor referred to in this Section 19; or

(9) avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall be cumulative and not exclusive. The references to rent in subparagraph (1) and to unpaid rent in subparagraphs (5) and (6) of this paragraph (b) mean all rent payable under Section 6(A), (B), (D) and (E) hereof and shall each include, without limitation, interest (at the applicable rate specified in Section 23.1 hereof) to the date of receipt by Lessor of the amounts payable under said subparagraph (5) or (6), on installments of rent owing hereunder from the respective due dates of such installments, and interest on all other costs, expenses and losses for which Lessor is entitled to payment under said subparagraph (5) or (6) from the respective dates that such costs, expenses and losses have been incurred by Lessor and to the date of receipt by Lessor of the amounts payable therefor under said subparagraph (5) or (6).

In the event that any court of competent jurisdiction determines that any right, remedy or claim of Lessor under this paragraph (b) is invalid or unenforceable in whole or in part, such determination shall not prohibit Lessor from establishing its damages sustained as a result of the occurrence of any Event of Default under this Lease in any action or proceeding in which Lessor seeks to recover such damages. Any repossession, sale or leasing of any Equipment shall not bar an action for damages for breach of this Lease, as hereinbefore provided, and the bringing of an action or the entry of judgment against Lessee shall not bar Lessor's right to repossess any or all Equipment.

20. Assignment and Mortgage. Lessor may assign this Lease, and may grant a mortgage on, or security interest in, any Equipment to any such assignee, in whole or in part, without notice to, or the consent of, Lessee. Each such assignee shall have all of the rights but none of the obligations of Lessor under this Lease and Lessee shall, upon receipt of written notice thereof, recognize each such assignment and mortgage or security interest and shall accept and comply with the directions or demands given in writing by any such assignee, provided that such directions or demands do not impose upon Lessee any greater obligations or duties than if such directions or demands were given by Lessor to Lessee pursuant to this Lease. Lessee shall not assert against such assignee any defense, counter-claim or set-off that Lessee may have against Lessor. However, nothing herein shall relieve Lessor from its obligations to Lessee hereunder. After any such assignment this Lease may not be amended or modified without the prior written consent of any such assignee. Upon any assignment of this Lease or the granting of any



mortgage on, or security interest in, any of the Equipment, Lessor or its assignee may record any instruments relating to the assignment, mortgage, or security interest desired by Lessor or such assignee in accordance with the laws of appropriate jurisdictions.

21. Recording. Lessee, at its own expense, will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. Upon request of Lessor, Lessee will execute, acknowledge and deliver to Lessor one or more Supplements to this Lease describing units of Equipment leased hereunder and Lessee shall cause such Supplements to be filed and recorded with the Interstate Commerce Commission. Upon termination of the lease of any unit of Equipment Lessor and Lessee shall execute any appropriate instrument requested by the other for filing with the Interstate Commerce Commission as evidence of termination of the lease of such unit of Equipment. In addition to the foregoing, Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) at Lessee's own expense, any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection of Lessor's ownership of the Equipment, or for the purpose of carrying out the intention of this Lease. Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any unit of Equipment.

22. Financial Statements and Other Reports. Lessee will furnish Lessor unaudited quarterly financial statements of Lessee within sixty (60) days after the end of each quarter, certified to be true and correct by its chief financial officer, and will also furnish Lessor, within one hundred twenty (120) days after the close of each fiscal year of Lessee, a consolidated Balance Sheet and Profit and Loss Statement of Lessee as of the end of such year certified by the independent public accountants of Lessee. To the extent that Lessee is or may be required to submit quarterly and/or annual reports and/or certifications to the Securities and Exchange Commission, Lessee will furnish Lessor with copies of such reports and/or certifications at the time of the said submission of same by Lessee.

23. Miscellaneous.

23.1 Late Charges on Overdue Payments. Any nonpayment of rent or other amounts due hereunder shall result in the obligation on the part of Lessee promptly to pay also an amount equal to twelve percent (12%) per annum (or the maximum per annum rate of interest permitted by law, whichever is less) of the overdue rent or other amounts for the period of time during which they are overdue.

23.2 Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to Lessor, at Lessor's address set forth herein, attention of Vice President-Administration;

if to Lessee, at 402 Cedar Rock Street, P.O. Box 216, Pickens, South Carolina 29671.

or addressed to any party at such other address as such party shall hereafter furnish to the other in writing.

23.3 Entire Agreement; Severability; Effect and Modification of Lease. This Lease and the related agreements referred to in Section 19(a)(ix) and (x) hereof constitute the entire agreements between Lessor and Lessee with respect to the leasing of the Equipment, and cancel and supersede any and all prior oral or written understandings with respect thereto. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to



the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by a duly authorized officer of Lessor and by a duly authorized officer or representative of Lessee. A waiver on any one occasion shall not be construed as a waiver on any future occasion. This Lease shall be binding upon and shall inure to the benefit of Lessor and Lessor's successors and assigns, and shall be binding upon and shall inure to the benefit of Lessee and Lessee's heirs, executors, administrators, other legal representatives, successors and (subject to the restrictions of Section 12 hereof) assigns.

23.4 Execution in Counterparts. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

23.5 Governing Law. Lessor and Lessee agree that the terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Massachusetts; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

23.6 Lessor's Right to Perform for Lessee. If Lessee fails to duly and promptly perform any of its obligations under this Lease (except for the payment of rent) or fails to comply with any of the covenants or agreements contained herein, Lessor may itself perform such obligations or comply with such covenants or agreements, for the account of Lessee without thereby waiving any default, and any amount paid or expense (including reasonable attorneys' fees) incurred by Lessor in connection with such performance or compliance shall, together with interest thereon at the rate of twelve percent (12%) per annum (providing such rate does not exceed the maximum rate permitted by law, in which event the maximum rate permitted by law shall apply) be payable by Lessee to Lessor on demand.

23.7 No Agency. The relationship between Lessor and Lessee shall always and only be that of Lessor and Lessee. Lessee shall never at any time during the term of this Lease for any purpose whatsoever be or become the agent of Lessor, and Lessor shall not be responsible for the acts or omissions of Lessee or its agents.

23.8 Agreement for Lease Only. Lessor and Lessee agree that this Lease is and is intended to be a true lease (and not a lease intended as security or a lease in the nature of a security interest) and further agree to treat same as a true lease for all purposes, including, without limitation, legal, tax, clerical and accounting.

24. Purchase Option. If an Event of Default has not occurred and is not continuing hereunder, Lessee, by giving Lessor not less than one (1) year's written notice prior to the scheduled expiration date of the original one hundred and twenty-one (121) month lease term of the unit or units of Equipment whose lease term first expires under this Lease, (or written notice not less than one (1) year prior to the expiration of any extension of the lease term of such Equipment) may elect to purchase not less than all of the Equipment then leased hereunder, at the times and in the manner hereinafter specified, for an amount equal to the fair market value of all of the Equipment at the time of the expiration of such lease term, plus any applicable sales tax with respect thereto. If Lessee elects to exercise said purchase option same shall be exercised with respect to each unit of Equipment on the day immediately following the date of expiration of the lease term of such unit, and by the delivery at such time by Lessee to Lessor of payment, in cash, or by certified check, of the amount of the purchase price for the Equipment, as hereinbefore set forth. Upon payment of such amount, Lessor shall, upon request of Lessee, execute and deliver to Lessee a bill of sale for the Equipment, transferring to Lessee whatever title to the Equipment Lessor may have, on an "as-is, where-is" basis, without representations or warranties of any kind whatsoever, except that the Equipment is free and clear from any liens or encumbrances placed thereon by Lessor or by persons who are claiming solely against Lessor but not against Lessee. If Lessee does not furnish Lessor with the aforesaid written notice of its intent to exercise said purchase option, Lessee shall return each

unit of Equipment to Lessor, pursuant to and under the terms and conditions of Section 17 hereof, upon the expiration of said original lease term thereof, or, if extended as provided in Section 25 hereof, upon the expiration of such extension. If an Event of Default occurs and is continuing hereunder after Lessee has given Lessor written notice of its intention to exercise said purchase option, the said purchase option shall be null and void.

In the event that there should be a dispute as to the fair market value of any Equipment Lessee shall, upon Lessor's written request, and at Lessee's sole cost and expense, forthwith obtain an independent appraiser acceptable to Lessor to make an appraisal of the then fair market value of such Equipment. The report of said appraiser setting forth its determination of such fair market value shall be delivered to Lessor and Lessee not later than thirty (30) days following the date of Lessor's said written request to Lessee and shall be conclusive and binding upon Lessor and Lessee. If Lessor and Lessee cannot agree upon the choice of an appraiser, a panel of three (3) appraisers shall be chosen, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two so selected, and the determination of a majority of said appraisers shall be conclusive and binding.

25. Extension of Lease Term. Lessee may, at its option, elect to extend the lease term of not less than all of the Equipment then leased hereunder, upon the expiration of the original one hundred twenty-one (121) month lease term of the Equipment, for an additional period of not less than nor more than five (5) years, and for a rental payable monthly in advance, on the first day of each month, in an amount equal to the then fair rental value for such Equipment. It shall be a condition precedent to the exercise of such option, with respect to such extension that no Event of Default has occurred and is continuing and that Lessee shall give Lessor written notice of Lessee's intent to exercise such option with respect to such extension not less than one (1) year prior to the scheduled expiration date of the said original lease term of the unit or units of Equipment whose lease term first expires under this Lease. If Lessee does not furnish Lessor with the aforesaid written notice of its intent to exercise said option, or to purchase the Equipment as provided in Section 24 hereof, Lessee shall return each unit of Equipment to Lessor, pursuant to and under the terms and conditions of Section 17 hereof, upon the expiration of the said original lease term thereof, or, if the said original lease term has been so extended, then upon the expiration of the said extended lease term thereof. In the event that there should be a dispute as to the then fair rental value of any of the Equipment, Lessee shall, upon Lessor's written request, and at Lessee's sole cost and expense, forthwith obtain an independent appraiser acceptable to Lessor to make an appraisal of the then fair rental value of such Equipment. The report of said appraiser setting forth its determination of such fair rental value shall be delivered to Lessor and Lessee not later than thirty (30) days following the date of Lessor's said written request to Lessee and shall be conclusive and binding upon Lessor and Lessee. If Lessor and Lessee cannot agree upon the choice of an appraiser, a panel of three (3) appraisers shall be chosen, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two so selected, and the determination of a majority of said appraisers shall be conclusive and binding.

26. Investment Tax Credit Representation and Indemnity. Lessor, as the owner of the Equipment, shall be entitled to retain the full investment tax credit provided for by the Internal Revenue Code of 1954, as amended. Lessee represents and warrants that (i) at the time Lessor becomes the owner of any Equipment, such Equipment will constitute "new Section 38 property" within the meaning of Section 48(b) of said Internal Revenue Code, and at such time, such Equipment has not been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) of said Internal Revenue Code from commencing with Lessor, and (ii) at all times during the lease term thereof such Equipment will constitute "Section 38 property" within the meaning of Section 48(a) of said Internal Revenue Code.




If, as to any Equipment, under any circumstances and for any reason whatsoever (and regardless of whether such Equipment is public utility property as defined in Section 46 of the Internal Revenue Code of 1954, as amended), Lessor shall lose, or shall not have the right to claim, or there shall be disallowed or recaptured any portion of the full ten percent (10%) investment tax credit, allowable under Section 38 of the



said Internal Revenue Code, Lessee agrees to pay Lessor upon demand, as an indemnity, the sum of (1) an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such amount under the laws of the United States or any state, city or other political subdivision thereof, or of any foreign country or political subdivision thereof, shall be equal to the amount of said investment tax credit so lost or disallowed or recaptured, or which may not be claimed, and (2) the amount of any interest or penalty which may be assessed by the United States Government against Lessor in connection with the loss or disallowance or recapture of said investment tax credit or Lessor's inability to have the right to claim the same. For purposes of this Section 26, any investment tax credit claimed by Lessor with respect to any Equipment which has been the subject of a Casualty Occurrence, shall conclusively be deemed to have been recaptured and therefore lost by Lessor as of the date of such Casualty Occurrence. It is recognized and agreed by Lessor and Lessee that the amounts specified in the Schedule of Stipulated Loss Values attached to this Lease as Exhibit "D" do not include therein any amounts payable under this Section 26. In the event of a Casualty Occurrence with respect to any Equipment, for example, the amount of the investment tax credit indemnity payable by Lessee to Lessor as a result thereof shall be calculated and payable under and pursuant to this Section 26, and shall be in addition to the amount of the applicable Stipulated Loss Value then payable to Lessor with respect to such Equipment as a result of such Casualty Occurrence. The indemnity contained in this Section 26 shall survive the expiration or other termination of the lease term of all Equipment leased under this Lease.

27. Accelerated Depreciation Indemnity. Lessor, as the owner of the Equipment shall be entitled to deductions for depreciation of each unit of Equipment under Section 167 of the Internal Revenue Code of 1954, as amended, commencing in the year that such unit is purchased by Lessor, computed on the basis (i) that each such unit will have a basis under Section 167(g) of said Internal Revenue Code at least equivalent to the Acquisition Cost thereof, (ii) of the double declining balance or sum-of-the-years-digits method of depreciation authorized by Section 167(b)(2) or (3) of said Internal Revenue Code, (iii) of the asset depreciation range system of Treasury Regulation §1.167(a)-11, (iv) of an asset depreciation period of 12 years and (v) of no salvage value (herein called the Accelerated Depreciation Deductions). If, under any circumstances and for any reason whatsoever, Lessor shall not be entitled to or shall suffer a loss, disallowance or recapture of all or any portion of the Accelerated Depreciation Deductions then, upon receipt of a written demand therefor from Lessor, Lessee will pay to Lessor a sum which, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such sum under the laws of the United States or any state, city or other political subdivision thereof, as to such inability of Lessor to obtain the benefit of the Accelerated Depreciation Deductions shall be such sum as shall, in the opinion of Lessor, cause Lessor's net return (computed on the same assumptions, including tax rates, as were utilized by Lessor in originally evaluating this transaction) to equal what such net return would have been if Lessor were entitled to obtain the benefit of such Accelerated Depreciation Deductions. The indemnity contained in this Section 27 shall survive the expiration or other termination of the lease term of all Equipment leased under the Lease.

28. Special Provisions Re: Subordinated Indebtedness of National. Reference is made to (a) the Subordination Agreement of even date herewith between Lessee and National (the "National Subordination Agreement") pursuant to which National and Lessee have agreed that until all of Lessee's obligations, accrued and executory, under this Lease have been paid and performed in full, any indebtedness now or hereafter owing by Lessee to National is subordinated to the payment and performance of Lessee's said obligations under this Lease, and (b) the Subordination Agreements of even date herewith among Lessee, National and various creditors of National who are either stockholders of National or corporations controlled by such stockholders (the "Creditor Subordination Agreements"), pursuant to which such creditors have agreed to subordinate the indebtedness owing by National to such creditors, as specified in the Creditor Subordination Agreements, to the payment and performance in full of all of the obligations of Lessee, accrued and executory, under this Lease. In the event



that, at any time, National determines that it is in National's best interest to pay any portion or all of the indebtedness owing by National to any of its said creditors under the Creditor Subordination Agreements prior to the date or dates permitted for such payments thereunder, then, notwithstanding the restrictions and limitations of the National Subordination Agreement and the Creditor Subordination Agreements, National shall have the right to pay any portion or all of such indebtedness to any of its said creditors, upon written notice to such effect to Lessor, (specifying in such written notice the details concerning such payment) provided that, and it shall be a condition precedent to such payment that:

(a) Lessee will promptly pay Lessor the aggregate Stipulated Loss Value of all Equipment then leased under this Lease, as of the last day of the month in which the first such payment is made by National to any of its said creditors, together with any accrued and unpaid rent then owing hereunder.

(b) Title to all of said Equipment shall, notwithstanding such payment by Lessee set forth in (a) above, remain in Lessor, and Lessee shall continue to lease all of said Equipment from Lessor for a further period of five (5) full years from the date of such payment by Lessee to Lessor, at the rental, and upon and subject to the terms and conditions, specified in Section 25 of this Lease. Upon the expiration of said five (5) year term, Lessee may exercise the purchase option specified in Section 24 of this Lease, upon and subject to the terms and conditions thereof, including the provisions respecting the giving of notice set forth therein.

(c) Lessee will indemnify and hold Lessor harmless from and against any and all adverse tax consequences and liabilities incurred or sustained by Lessor (and all fees, costs and expenses in connection therewith) relating to, resulting from, or arising out of the payment to be made by Lessee to Lessor under clause (a) above and/or the leasing of the said Equipment by Lessee under and for the term specified in clause (b) above, and said indemnification shall be in addition to, and not in limitation of, the indemnification obligations of Lessee under this Lease, including the indemnification obligations with respect to investment tax credit and accelerated depreciation set forth in Sections 26 and 27 of this Lease.

(d) Upon Lessor's receipt of the payment of the said Stipulated Loss Value specified in clause (a) above, the National Subordination Agreement and the Creditor Subordination Agreements shall, insofar as Lessor is concerned, become null and void.

IN WITNESS WHEREOF, Lessor and Lessee, each pursuant to due authority, have duly executed this Lease as of the date first above written.

ATTEST:


Secretary

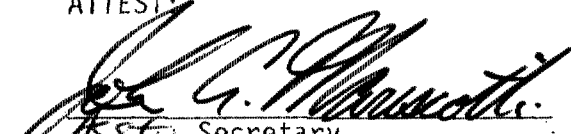
(Corporate Seal)

CHANDLER LEASING DIVISION,
PEPSICO LEASING CORPORATION (Lessor)

By 
(authorized signature)

Its 
(title)

ATTEST:


Secretary

(Corporate Seal)

PICKENS RAILROAD COMPANY (Lessee)

By 
(authorized signature)


Its 
(title)

EXHIBIT "A"

<u>Type of Railroad Equipment</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Reporting Marks</u>	<u>Lessee's Car Numbers (Inclusive)</u>
New 70-ton, 50-foot railroad boxcars	<i>XM</i>	100	PICK	55300 through 55399

PICKENS RAILROAD COMPANY (Lessee)

By

John R. ...
(authorized signature)

Its

Vice President
(title)

CHANDLER LEASING DIVISION,
PEPSICO LEASING CORPORATION (Lessor)

By

[Signature]
(authorized signature)

Its

Vice President
(title)

EXHIBIT "B"

CERTIFICATE OF INSPECTION AND ACCEPTANCE

Pursuant to Equipment Lease (Lease No. 90891) dated _____, 1975, (the "Lease") by and between CHANDLER LEASING DIVISION, PEPSICO LEASING CORPORATION ("Lessor") a Delaware corporation with a place of business at 101 Hartwell Avenue, Lexington, Massachusetts 02173, and PICKENS RAILROAD COMPANY ("Lessee") a South Carolina corporation, with a place of business at Pickens, South Carolina, Lessee hereby (a) certifies and acknowledges that the equipment described below (the "Equipment") and described on Rental Schedule Number _____ has been delivered to, and inspected by, Lessee, is of a size, design, capacity and manufacture acceptable to Lessee for lease under the Lease, is suitable for Lessee's purposes, is in good working order, repair and condition, and has been installed to the satisfaction of Lessee, and (b) unconditionally accepts the Equipment for all purposes of the Lease, as of the date hereof.

Home Points of Equipment _____

<u>Description of Equipment</u>	<u>Quantity</u>	<u>AAR Mechanical Designation</u>	<u>Reporting Marks</u>	<u>Lessee's Car Number(s)</u>
---------------------------------	-----------------	---	----------------------------	---------------------------------------

PICKENS RAILROAD COMPANY (Lessee)

By _____
(authorized signature)

Its _____
(title)

Date: _____

EXHIBIT "C"

RENTAL SCHEDULE NUMBER _____

Pursuant to an Equipment Lease (Lease No. 90891) dated , 1975, (the "Lease") between CHANDLER LEASING DIVISION, PEPSICO LEASING CORPORATION ("Lessor"), a Delaware corporation, with a place of business at 101 Hartwell Avenue, Lexington, Massachusetts 02173, and PICKENS RAILROAD COMPANY ("Lessee"), a South Carolina corporation, with a place of business at Pickens, South Carolina

_____ , the terms and conditions of which are hereby incorporated herein by reference, Lessee hereby (a) authorizes Lessor to order for lease to Lessee the equipment described herein (the "Equipment") and to insert hereon the Lease Commencement Date and the partial first month's rent (if any) for such Equipment upon Lessee's acceptance of same for lease, (b) agrees to lease such Equipment from Lessor effective the Lease Commencement Date thereof and for the lease term specified below, and (c) agrees to pay Lessor the rent, in the amounts and at the times specified below, for each unit of Equipment. All of the terms used herein which are defined in the Lease shall have the same meaning as so defined.

<u>Description of Equipment</u>	<u>Quantity</u>	<u>AAR Mechanical Designation</u>	<u>Reporting Marks</u>	<u>Lessee's Car Number(s)</u>	<u>Acquisition Cost</u>
---------------------------------	-----------------	---	----------------------------	---------------------------------------	-----------------------------

Lease Term: one hundred twenty-one (121) full months, plus any partial first month (excluding any option extension)
optional extension(s): one (1) five (5) year extension

Rent:

(a) partial first month's rent: \$ _____, payable with first full month's rent.

(b) \$_____ per month basic rent for first one hundred twenty-one (121) months, payable not later than forty-five (45) days after last day of each month.

(c) additional rent, as specified in Section 6(B) of the Lease.

(d) during optional extension: fair rental value, payable monthly in advance.

Home Points of Equipment: _____

Name and Address of Vendor of Equipment: _____

Lease Commencement Date for Equipment: _____

PICKENS RAILROAD COMPANY
(Lessee)

(Lessee)

By _____
(authorized signature)

Its _____
(title)

CHANDLER LEASING DIVISION,
PEPSICO LEASING CORPORATION (Lessor)

By _____
(authorized signature)

Its _____
(title)

Date of Execution: _____

Date of Execution: _____

EXHIBIT "D"

SCHEDULE OF STIPULATED LOSS VALUES

Last Day of Month Number	Stipulated Loss Value (as percentage of Acquisition Cost)	Last Day of Month Number	Stipulated Loss Value (as percentage of Acquisition Cost)
1	112.2%	61	87.1%
2	112.1%	62	86.4%
3	112.0%	63	85.6%
4	111.9%	64	84.9%
5	111.7%	65	84.1%
6	111.5%	66	83.3%
7	111.4%	67	82.5%
8	111.2%	68	81.8%
9	111.0%	69	80.9%
10	110.8%	70	80.1%
11	110.6%	71	79.3%
12	110.4%	72	78.5%
13	110.2%	73	77.6%
14	109.9%	74	76.8%
15	109.7%	75	75.9%
16	109.4%	76	75.0%
17	109.1%	77	74.1%
18	108.9%	78	73.3%
19	108.6%	79	72.3%
20	108.3%	80	71.4%
21	108.0%	81	70.5%
22	107.6%	82	69.6%
23	107.3%	83	68.6%
24	107.0%	84	67.7%
25	106.6%	85	66.7%
26	106.2%	86	65.7%
27	105.9%	87	64.7%
28	105.5%	88	63.7%
29	105.1%	89	62.7%
30	104.7%	90	61.7%
31	104.3%	91	60.7%
32	103.9%	92	59.6%
33	103.4%	93	58.6%
34	103.0%	94	57.5%
35	102.5%	95	56.4%
36	102.1%	96	55.4%
37	101.6%	97	54.3%
38	101.1%	98	53.2%
39	100.6%	99	52.1%
40	100.1%	100	50.9%
41	99.6%	101	49.8%
42	99.1%	102	48.7%
43	98.5%	103	47.5%
44	98.0%	104	46.3%
45	97.4%	105	45.2%
46	96.8%	106	44.0%
47	96.3%	107	42.8%
48	95.7%	108	41.6%
49	95.1%	109	40.4%
50	94.5%	110	39.2%
51	93.8%	111	37.9%
52	93.2%	112	36.7%
53	92.6%	113	35.4%
54	91.9%	114	34.1%
55	91.3%	115	32.9%
56	90.6%	116	31.6%
57	89.9%	117	30.3%
58	89.2%	118	29.0%
59	88.5%	119	27.7%
60	87.8%	120	26.3%
		121 (and end of each month thereafter)	25.0%

(During partial first month Stipulated Loss Value is 113.5%)

PICKENS RAILROAD COMPANY
(Lessee)

By

John H. Ross
(authorized signature)

Its

Vice President

CHANDLER LEASING DIVISION,
PEPSICO LEASING CORPORATION (Lessor)

By

Q. E. Ross
(authorized signature)

Its

Vice President

Commonwealth

STATE OF Pennsylvania
COUNTY OF Philadelphia ss:

On this 25th day of September, 1975, before me personally appeared John H. Rees, to me personally known, who, being by me duly sworn, says that he is a Vice President of PICKENS RAILROAD COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Markus M. Allen
Notary Public

My Commission Expires: March 11 - 1976

Pennsylvania
COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX Philadelphia ss:

On this 25th day of September, 1975, before me personally appeared Duane E. Starr, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHANDLER LEASING DIVISION, PEPSICO LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Markus M. Allen
Notary Public

My Commission Expires: March 11 - 1976